

JS 44
(Rev. 11/95)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFSCERTAIN UNDERWRITERS AT
LLOYD'S, LONDON

FEB 25 2002

DEFENDANTSCCM GROUP, INC. and
MOVIE GRILL CONCEPTS I, LTD.(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF United Kingdom
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Dallas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME ADDRESS, AND TELEPHONE NUMBER)Richard H. Gateley
Brackett & Ellis (817) 338-1700
100 Main St., Fort Worth, TX 76102**ATTORNEYS (IF KNOWN)****3-02CV0386-L****II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 430 Liquor Laws <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 450 Airline Regs. <input type="checkbox"/> 460 Occupational Safety/Health <input type="checkbox"/> 490 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 696 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 697 Constitutionalality of State Statutes <input type="checkbox"/> 698 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Federal Declaratory Judgment Act, 28 U.S.C. Sections 2201-2202 for a determination of the parties' rights and obligations under a contract of insurance.

VII. REQUESTED IN COMPLAINT:CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

DATE February 20, 2002

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

FEB 25 2002

CLERK, U.S. DISTRICT COURT

CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON

VS.

CCM GROUP, INC. and MOVIE GRILL
CONCEPTS I, LTD.

§
§
§
§
§
§
§

CASE NO. _____

3:02-cv-00386-L

COMPLAINT FOR DECLARATORY RELIEF

Come now Plaintiffs, CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, Subscribing to Policy No. BA9900610558 (collectively "Underwriters"), and file this their Complaint for Declaratory Relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, for the Court's consideration and declaration of the parties' rights or obligations under the insurance contract at issue herein. In support of their complaint against Defendants, Underwriters respectfully show the Court as follows:

I.

PARTIES

Underwriters are insurance syndicates or companies having their principal places of business in London, England.

1. Defendant CCM Group, Inc. ("CCM Group") is a Texas corporation with its principal place of business at 134 Howell, Dallas, Texas 75207. Summons and service may be made upon its registered agent, Diane Cheatham, 134 Howell, Dallas, Texas 75207.

2. Defendant Movie Grill Concepts I, Ltd. ("Movie Grill") is a Texas limited partnership with its office and principal place of business in Collin County, Texas. Defendant Movie Grill may be served with citation by serving its registered agent for service, Brian E. Schultz, at its principal place of business located at 4721 West Park Blvd., Suite 100, Plano, Texas 75093.

II.

VENUE AND JURISDICTION

3. This Complaint for Declaratory Relief is brought pursuant to 28 U.S.C., §§ 2201-2202 and Rule 57 Federal Rules of Civil Procedure for the purpose of determining questions of actual controversy between the parties, as hereinafter more fully set forth. The jurisdiction of this Court is based upon the diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

4. Venue is proper in the United States District Court for the Northern District of Texas, Dallas Division, because a substantial part of the events giving rise to the claim occurred in this district.

III.

INSURING AGREEMENT

5. On or about November 15, 1999, Underwriters at the request and instance of CCM Group, issued a policy of insurance, being Policy No. BA9900610558, effective from November 15, 1999 to November 15, 2000 (the "Policy"). The Policy is a commercial general liability policy.

6. The Policy covers those sums that CCM Group becomes legally obligated to pay as damages because of bodily injury or property damage to which the insurance applies. The Policy also gives Underwriters the right and duty to defend any suit seeking such damages.

IV.

FACTS GIVING RISE TO THIS DISPUTE

7. On or about October 1, 1999, CCM Group entered into a contract with Movie Grill and thereafter, on or about December 8, 1999, entered into a second agreement with Movie Grill, both parts collectively forming the contract between CCM Group and Movie Grill. CCM Group was to provide architectural and construction services, along with other services pursuant to the terms and conditions stated in the contracts for the renovation and conversion of an existing movie theater into a movie grill and lounge to be known as Studio Movie Grill, located in Plano, Texas. In consideration of CCM Group's performance under the contract, Movie Grill agreed to pay CCM Group the initial contract amount of \$1,398,988.00.

8. In June 2000, after completion of the contract, CCM Group sued Movie Grill for failing to pay its contractual obligations. According to CCM Group, Movie Grill owed \$310,176.00 for performance of the contract.

9. In October 2000, Movie Grill filed a Counterclaim against CCM Group. Although Movie Grill admitted that it had contracted with CCM Group in October 1999, it claimed that CCM Group had offered a "fixed price" contract which included all design and construction cost. It further alleged that CCM Group falsely represented to Movie Grill that the complete cost for design and construction would be \$1,398,988.00. Movie Grill went on to allege that CCM Group breached its

contract in December 1999, by demanding the additional sum of \$310,176.00 from Movie Grill, when only \$135,924.00 would be justly due and owing if CCM Group had in fact fulfilled its obligations which, according to Movie Grill, it did not. Movie Grill also alleged that CCM Group had made other misrepresentations. Movie Grill alleged that CCM Group promised that the theater it was building would have the capacity for a certain size audience when, in truth and in fact, the theater capacity was significantly smaller than CCM Group represented it would be.

10. On or about January 7, 2002, CCM Group's lawyer to CCM Group notified Underwriters that Movie Grill had filed a Counterclaim against CCM Group. CCM Group, by and through its attorney, demanded that Underwriters provide a defense and indemnity under the Policy.

V.

ACTUAL CONTROVERSY EXISTS

11. The facts and circumstances set forth above have given rise to a controversy between the parties as to Underwriters' rights, duties and responsibilities, if any, under the Policy, and whether Underwriters are obligated to defend or indemnify CCM Group. There is therefore, an actual and justiciable controversy between the parties within the meaning of 28 U.S.C., §§ 2201-2202 over which this Court is vested with the power to determine and declare.

VI.

DECLARATIONS SOUGHT

12. Underwriters seek a declaration that they have no duty to defend or indemnify CCM Group because the allegations of Movie Grill's Counterclaim, when compared to the insuring agreement, show there is no "occurrence" as that term is defined in the Policy. Occurrence, as

defined in the Policy, means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. The allegations in Movie Grill's Counterclaim do not relate to an unexpected, unforeseen or undesigned happening or consequence which would be required to trigger coverage or a duty to defend.

13. Underwriters seek a further declaration that there is no duty to defend or indemnify because the allegations in Movie Grill's Counterclaim contain no claim for "property damage," as that term is defined in the Policy. The Policy defines "property damage" as meaning physical injury to tangible property or loss of use of tangible property, even though the property is not physically injured. Tangible property is such property as may be seen, weighed, measured and estimated by the physical senses. The only damages alleged by Movie Grill are economic losses: having to pay more money than the fixed price of the contract and pecuniary losses from having a theater which was smaller than promised. Underwriters seek a declaration that there is no defense or indemnity under the Policy because these damages are not "property damage."

14. Underwriters seek a further declaration that they have no duty to defend or indemnify CCM Group because the Policy excludes property damage expected or intended from the standpoint of the insured.

15. Underwriters have complied with all conditions precedent and all conditions subsequent such that they are entitled to seek these declarations from the Court.

VII.

ATTORNEY'S FEES

16. Underwriters have been required to employ the undersigned law firm to represent them and to prosecute this declaratory judgment action. Underwriters seek reimbursement of their reasonable and necessary attorney's fees, as may be allowed by law or in equity.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Underwriters pray that upon trial, the Court adjudicate and declare that Underwriters have no duty to defend or indemnify CCM Group for claims being asserted against it by Movie Grill. Furthermore, Underwriters request the Court to adjudicate and declare that they have no duty to pay any damages that CCM Group may become legally obligated to pay as a result of Movie Grill's Counterclaim. Underwriters request the Court to award them reasonable and necessary attorney's fees, costs of court and all further relief to which they may show themselves justly entitled at law or in equity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard H. Gateley", is written over a horizontal line.

Richard H. Gateley
State Bar I.D. No. 07752500

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ATTORNEYS FOR PLAINTIFF